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October 14, 2008

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Ex Parte Communication

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

On October 10, 2008, Albert H. Kramer and Robert F. Aldrich of Dickstein Shapiro LLP, on behalf of the American Public Communications Council ("APCC"), met with Jeremy Marcus, Acting Associate Chief of the Wireline Competition Bureau; Alex Minard, Acting Legal Counsel to the Bureau Chief; Rodger Woock, Chief of the Industry Analysis and Technology Division; and Carol Pomponio, Erica Myers, and Cindy Spiers of the Telecommunications Access Policy Division. We discussed the points covered in the enclosed summary.

By way of further explanation of the points discussed on page 5 of the enclosed summary, Section 254(d) of the Communications Act, 47 U.S.C. § 254(d), states that contribution to the Universal Service Funds ("USF") is mandatory only for "telecommunications carriers." Section 3(44) of the Act, 47 U.S.C. § 153(44), specifically excludes "aggregators" from the definition of "telecommunications carrier."[1] Under Section 226(a)(2) of the Act, independent payphone service providers ("PSPs") are "aggregators,"[2] as the Commission has repeatedly held.[3] Thus, since aggregators are explicitly excluded from the definition of

[1] The term "telecommunications carrier" does not include "aggregators of telecommunications services (as defined in section 226)." 47 U.S.C. § 153(44). *See Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15936, ¶ 876; *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, 20615 ¶ 147 (1996).

[2] Under 47 U.S.C. §226, an "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. §226(a)(2).

"telecommunications carrier," the statute does not compel the Commission to exact USF contributions from PSPs. Contributions should be imposed on non-telecommunications carriers only if "the public interest so requires." 47 U.S.C. §254(d).

For all the reasons stated in the enclosed summary, today the public interest is not served by requiring PSPs to contribute to the USF – either directly through payments to USAC or indirectly through pass-through charges assessed by local exchange carriers ("LECs") or long distance carriers. Moreover, although the amount that all PSPs contribute – currently $4-6 million annually[4] – is extremely small relative to the overall size of the annual USF fund contributions, currently more than $7.5 billion, these USF fees are a burden on an industry under severe economic pressure.

APCC recognizes that there many industry groups urging the Commission to grant them an exemption or discount rate for USF contributions because of the impact on their business. But PSPs seek this relief for its impact on the *public* interest, not just the impact on the payphone business. Payphones, are a unique classification that clearly merits separate treatment. Congress has mandated upon the Commission the duty to "foster the widespread deployment of public payphones." 47 U.S.C. § 276. And with good reason. As explained in the enclosed summary, although independent PSPs receive no USF support, the unique service they provide is the *essence* of universal service: public telephone service that is available to any person, 24/7, on demand, with no up-front installation or service fees, no delay in access to the service, no personal handset requirements, and no monthly charges. In addition, payphones are important national preparedness infrastructure, offering critical communications links in emergencies – both localized emergencies and national disasters. More generally, payphones function as the network access node of last resort, available when alternative means of wireline or wireless network access are unavailable, inoperable, or unaffordable. For the 5% of U.S. households that still lack telephone service, payphones are the only available link to the telecommunications network.

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3 *See* sources cited in Note 1, *supra*. *See also Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Report and Order, 6 FCC Rcd 2744, 2752 (1991).

4 This rough estimate assumes that LECs currently contribute from their payphone revenues about the same amount per payphone as independent PSPs. *See* enclosed Ex Parte, p.6.

For these reasons, the Commission should exclude payphones from contributing to the USF, or at a minimum, not impose any greater burden on payphones than the USF burden they currently bear. Moreover, the Commission must ensure that payphones do not bear any of the burden of special USF provisions providing relief to some USF payers.

Sincerely,

Albert Kramer

Albert H. Kramer
Robert F. Aldrich

AHK/rw
Enclosure
cc: Jeremy Marcus
Alex Minard
Rodger Woock
Carol Pomponio
Erica Myers
Cindy Spiers

APCC

REVISED UNIVERSAL SERVICE FUND CONTRIBUTION RULES MUST NOT FURTHER ENDANGER PAYPHONE DEPLOYMENT

American Public Communications Council
October 2008

SUMMARY

- Payphone service providers (PSPs) should not be required to pay USF contributions.
  - Payphones provide a form of universal service, but independent PSPs receive no USF support payments.
  - Payphone service is severely endangered.
    - Payphone deployment has declined more than 50%.
  - Requiring USF contributions from payphones does not serve the public interest.
- If the Commission continues to require USF contributions from payphones, the contributions should not exceed current levels.
- Any new contribution scheme cannot require PSPs to subsidize other contributors or competitors.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS

PSPs PROVIDE A FORM OF UNIVERSAL SERVICE BUT RECEIVE NO USF SUPPORT PAYMENTS

- Payphones effectively provide universal service.
  - Payphones offer 24/7 on-demand telephone service with no up-front fees or monthly charges.
  - Payphones provide critical emergency service.
  - Payphones provide last-resort network access to travelers and others when wireless alternatives are unavailable or unusable.
  - Payphones provide essential service to callers who cannot afford wireless phones and to households with no home phone.
- Under the current scheme, even though they offer a form of universal service, independent PSPs do not receive USF support payments.
  - In fact, PSPs subsidize wireless competitors who do receive USF support.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

PAYPHONE SERVICE IS SEVERELY ENDANGERED

- Today, more than ever, rising costs and declining revenues threaten the widespread deployment of payphones mandated by Sec. 276.
- Payphone deployment in the United States declined from more than 2,000,000 in 2000 to about 1,000,000 in 2006.
  - By 2008, the number deployed declined more than 20% more, to less than 800,000.
  - Today, most payphones are operated by independent PSPs who receive no USF support, while LECs that receive USF support are abandoning their commitment to payphones.
- The public interest in preserving a form of universal service provided by payphones dictates that PSPs not be required to make USF contributions.

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PSPs SHOULD NOT BE REQUIRED TO PAY USF CONTRIBUTIONS (cont'd)

REQUIRING USF CONTRIBUTIONS FROM PAYPHONES DOES NOT SERVE THE PUBLIC INTEREST

- The Commission is not *required* to exact USF contributions from independent PSPs -- PSPs are not "telecommunications carriers."
- The Commission may require contributions from non-telecommunications carriers only " if the public interest so requires." 47 U.S.C. 254(d).
- Payphones are an integral part of the national preparedness infrastructure.
- Today, it is not in the public interest to require PSPs, who do not receive USF payments but help provide universal service, to make USF contributions.

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IF PSPs MUST CONTRIBUTE, PSP CONTRIBUTIONS MUST NOT EXCEED CURRENT AVERAGE LEVELS

- Before the *USF Payphone-Centrex Order* (2/14/08), PSPs' USF costs averaged $.63 per line per month.
  - $.27 for direct payers (39% of ind. payphones)
  - $.86 for *de minimis* payers (61% of ind. payphones)
- Currently, PSPs' USF costs average *at most* $.50 per line per month.
  - $.27 for direct payers
  - $.65 for *de minimis* payers
- Under revised rules, any PSP contribution should not exceed $.50 per line per month.

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ANY NEW CONTRIBUTION SCHEME CANNOT REQUIRE PSPs TO SUBSIDIZE OTHER CONTRIBUTORS OR CUSTOMERS

- The FCC's *USF Payphone-Centrex Order* prohibited LECs from recovering from PSPs any USF costs attributable to Centrex customers.

- A revised contribution scheme, similarly, cannot require PSPs to subsidize costs attributable to other contributors or customers.